



22 CFR Part 126

[Public Notice: 11862]

RIN 1400-AF55

International Traffic in Arms Regulations: Expansion of Defense Articles and Defense Services Eligible for Transfer under the Canadian and Treaty Exemptions

AGENCY: Department of State.

ACTION: Final rule and conforming revisions.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to expand the types of defense articles that may be exported and defense services that may be furnished pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, and the Canadian exemptions of the ITAR. The Department of State is also making clarifying amendments and conforming updates.

DATES: The rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]

FOR FURTHER INFORMATION CONTACT: Mr. Dilan Wickrema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 634-4981;

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Supplement No.1 to part 126 Amendments

SUPPLEMENTARY INFORMATION: The rules (Public Notice 7828, 77 FR 16591 & Public Notice 8270, 78 FR 21523), published on March 21, 2012 and April 11, 2013, respectively, amended the ITAR to implement the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (referred to herein as “the Australia DTC Treaty”) (Treaty Doc. 110-10) and the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (referred to herein as “the UK DTC Treaty”) (Treaty Doc. 110-7) (together referred to herein as “the Treaty exemptions”), and identified via Supplement No. 1 to part 126 the defense articles that may not be exported, and defense services that may not be furnished, through the use of the Treaty exemptions (ITAR §§ 126.16 and 126.17) and the Canadian exemptions (ITAR § 126.5).

The Department of State is now amending Supplement No. 1 to part 126 to expand the types of defense articles that may be exported, and defense services that may be furnished, pursuant to the Treaty exemptions and Canadian exemptions.

The Department of State is implementing this amendment after a series of routine consultations with its interagency and international counterparts. This amendment is intended to ensure the Treaty exemptions and the Canadian exemptions continue to enhance operational capabilities, interoperability, and cooperation between the

armed forces of the United States and its allies and partners. While future rulemaking will address other areas of the chart, this final rule implements four specific changes to Supplement No. 1 to part 126.

First, this final rule amends the 25th entry, identified as USML Category IV which previously excluded “[d]efense articles and services specific to torpedoes,” to exclude only “defense articles and services specific to the warhead or the sonar, guidance, and control section of torpedoes.” Second, this final rule amends the 105th entry, identified as USML Category XX(c), which previously excluded “[d]efense articles and services specific to submarine combat control systems,” to remove mounting racks and cabinets from that entry.

Third, this final rule amends the 60th entry, the 66th entry, and explanatory Note 9 to remove specific Underwater Acoustic Decoy Countermeasures (ADC) from Supplement No. 1 and clarify the note. Fourth, this final rule amends the 28th and 29th entries regarding USML Category IV(i) manufacturing know-how and the 67th - 70th entries regarding USML Category XII night vision. The USML Category IV(i) technical data entries are amended to reflect the fact that USML Category IV(h) was previously updated (79 FR 34) to describe the specific subassemblies of other USML Category IV defense articles that remain ITAR-controlled. Similarly, the night vision entries are updated to reflect the fact that first generation image intensification tubes are not subject to the ITAR, some items previously controlled in paragraph (c) of Category XII moved to paragraph (e) in a

prior rulemaking (81 FR 70340), and to clarify that the technical data and defense services entry only applies to paragraph (f) of Category XII.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(a)(1).

Regulatory Flexibility Act

This rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function. Therefore, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). This rule's scope does not impose additional regulatory requirements or obligations; therefore, the Department believes costs associated with this rule will be minimal. Although the Department cannot determine based on available data how many fewer licenses will be submitted as a result of this rule, the amendments to Supplement No. 1 will relieve licensing burdens for some exporters. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because this rule pertains to specific bilateral and multilateral relationships, this rule is not a "significant regulatory action" as the rule "pertain[s]" to a "military or foreign

affairs function of the United States” under section 3(d)(2) of Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This final rule does not impose or revise any new information collections subject to 44 U.S.C. chapter 35.

List of Subjects in Part 126

Arms and munitions, Exports

For the reasons set forth above, the Department of State amends 22 CFR part 126 as follows:

PART 126 – GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: 22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797; Sec. 1225, Pub. L. 108-375, 118 Stat. 2091; Sec. 7045, Pub. L. 112-74, 125 Stat. 1232; Sec. 1250A, Pub. L. 116-92, 133 Stat. 1665; Sec. 205, Pub. L. 116-94, 133 Stat. 3052; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

2. Amend Supplement No. 1 to part 126 by revising:
 - a. The seven entries for USML Category IV;
 - b. The six entries for USML Category XI;
 - c. The five entries for USML Category XII;
 - d. The entry for USML Category XX(c); and
 - e. Note 9.

The revisions read as follows:

Supplement No. 1 to Part 126

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USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
	* * * *	*	*	*
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). <i>See</i> Note 6	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (<i>i.e.</i> , not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to the warhead or the sonar, guidance, and control section of torpedoes.		X	X
IV	Defense articles and services specific to anti-personnel landmines. <i>See</i> Note 15	X	X	X
IV	Defense articles and services specific to cluster munitions.	X	X	X

IV(i)	Software source code directly related to defense articles described in USML Category IV(a), (b), (c), or (g). <i>See</i> Note 4		X	X
IV(i)	Manufacturing know-how directly related to defense articles described in USML Category IV(a), (b), (d), (g), or (h). <i>See</i> Note 5	X	X	X

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XI(a), (c), (d)	Defense articles and services specific to countermeasures and counter- countermeasures, other than Underwater Acoustic Decoy Countermeasures (ADC) Mk2 Mods 1 through 7. <i>See</i> Note 9		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. <i>See</i> Note 16		X	
XI(a), (c), and (d)	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. <i>See</i> Note 10		X	X
XI(a), (c), and (d)	Defense articles and services specific to USML Category XI(b) (e.g., communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). <i>See</i> Note 4		X	X
XI(d)	Manufacturing know-how related to USML Category XI(a)(3) or XI(a)(4), and specially designed components therefor. <i>See</i> Note 5	X	X	X

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XII	Defense articles and services specific to countermeasures and counter- countermeasures, other than Underwater Acoustic Decoy		X	X

	Countermeasures (ADC) Mk 2 Mods 1 through 7. <i>See Note 9</i>			
XII	<p>Defense articles and services specific to USML Category XII(c) articles, except:</p> <ul style="list-style-type: none"> - 2nd-generation image intensification tubes, - 2nd-generation image intensification night sighting equipment, and - end-items in paragraph (c) and components in paragraphs (e)(4) through (7) of USML Category XII, and the following technical data directly related thereto: <ul style="list-style-type: none"> - technical data limited to basic operations, maintenance, and training information as authorized under the exemption in §125.4(b)(5) of this subchapter for export directly to a Canadian Government entity (<i>i.e.</i>, federal, provincial, territorial, or municipal) consistent with §126.5, other exclusions, and the provisions of this subchapter. 	X		
XII(f)	Technical data and defense services directly related to night vision commodities beyond basic operations, maintenance, and training information, unless pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (2), or (4) of §126.16 or §126.17 of this subchapter.	X	X	X
XII(f)	<p>Manufacturing know-how directly related to any of the following:</p> <ul style="list-style-type: none"> - defense articles described in USML Category XII(d), and - specially designed parts and components therefor. <p><i>See Note 5</i></p>	X	X	X
XII(f)	Software source code directly related to defense articles described in USML Category XII(a), (b), (c), or (d). <i>See Note 4</i>		X	X

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XX(c)	Defense articles and services specific to submarine combat control systems other than mounting racks and cabinets.		X	X
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NOTE 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

- (a) IR countermeasures;
- (b) Classified techniques and capabilities;
- (c) Exports for precision radio frequency (RF) location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and radio direction finding capabilities. Precision RF location is defined as root mean square (RMS) angle of arrival accuracy of less than five degrees (5° RMS) and RF emitter location of less than ten percent (10 %) range error;
- (d) Providing the capability to reprogram; and
- (e) Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures other than the Underwater Acoustic Decoy Countermeasures (ADC) Mk 2 Mods 1 through 7.

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Bonnie Jenkins,

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Department of State.

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